



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 26, 1947

all WW-250

Honorable Robert S. Calvert
Comptroller of Public Accounts
State of Texas
Austin, Texas

Opinion No. WW-238

Re: May the Comptroller of Public
Accounts issue warrants to pay
for a necessary easement and to
cover the cost of the plans and
specifications involved in the
construction of a certain radio
building to be built by the
Texas Department of Public Safety
near Midland, Texas?

Dear Mr. Calvert:

You have requested an opinion which involves the issuance of certain warrants which are required in connection with the construction of a radio building by the Texas Department of Public Safety. In your request you have posed the following questions:

"Please advise if I may issue my warrant in payment of easement on which the radio building is to be constructed?

"Please advise if I may issue my warrant in payment of the plans and specifications of the radio building without the State Board of Control's approval?"

We shall answer your questions in the order presented.

Section 22 of Article VI of House Bill No. 140, Acts of the 54th Legislature, Regular Session, 1955, chapter 519, page 1592, which deals with the acquisition of property under the provisions of the General Appropriation Bill, provides, in part, as follows:

"Except as specifically authorized to do so by existing statutes, none of the agencies for which appropriations are made in this Act shall accept the donation of real property, except

gifts or devises of real property from private sources for the establishment of scholarships, professorships, or other trusts for educational purposes, provided such property will not thereafter require appropriations by the Legislature for operation, maintenance, repair or the construction of buildings; or expend any of the moneys appropriated herein for the purchase of real property without the expressed permission and authorization of the Legislature. . . ." (Emphasis ours).

House Bill 140, Acts of the 54th Legislature, Regular Session, 1955, chapter 519, page 1499, which provides for the appropriation of funds to the Texas Department of Public Safety for the current biennium, reads, in part, as follows:

"The above appropriations are for salaries, seasonal or contingent help, travel, transportation, automobile maintenance and repairs, gas, oil, tires, etc., bond premiums, office and equipment rentals, storage, repairs, forage, duplicating supplies, printing, telephone and telegraph, postage, stationery, clothing and furnishings, express and freight, drayage, utilities, service materials, office supplies, books, drugs, medical, hospital and laboratory expense, and funeral expense when death results in line of duty. Also, necessary expenses for operating a law enforcement training school, and miscellaneous operating expenses. Purchase of equipment, guns, automobiles, aircraft, and any and all other necessary equipment necessary to the enforcement of all laws under the supervision of the Department of Public Safety."

House Concurrent Resolution No. 26, Acts of the 55th Legislature, reads as follows:

"WHEREAS, The Texas Department of Public Safety is desirous of erecting a communications station in the vicinity of Midland, Texas, in order to continue to carry out the Department's statutory duty of providing for the rapid exchange of information concerning the commission of crimes and the detection of violators of the law; and

"WHEREAS, It is necessary to acquire an easement upon property heretofore located and upon which an easement can be acquired for a reasonable expenditure; and

Honorable Robert S. Calvert, page 3 (WW-238)

"WHEREAS, There exists sufficient appropriations necessary to purchase said easement and erect such station; and

"WHEREAS, A question has arisen as to whether the expenditure of such moneys heretofore appropriated can be lawfully made without the express permission and authorization of the Legislature, due to a restriction upon the purchase of real property contained in the biennial Appropriation Bill of the Fifty-fourth Legislature, Regular Session, 1955; now therefore, be it

"RESOLVED by the House of Representatives, the Senate concurring, That the Texas Department of Public Safety is authorized to expend appropriated funds for the purpose of acquiring the necessary easement to permit the erection, operation, and maintenance, of such communications station."

Because of the prohibitions of Section 30 of Article III of the Constitution of Texas, the above quoted House Concurrent Resolution does not have the status of a law. However, the Resolution does stand as an avowal of the Legislature's intent. As such, we believe that H.C.R. No. 26, Acts of the 55th Legislature, clearly indicates that it was the intent of the Legislature that the provisions of House Bill 140, Acts of the 54th Legislature, Regular Session 1955, chapter 519, page 1499, should include an expenditure of funds for the purchase of the easement in question.

For this reason, we are of the opinion that an expenditure of funds for the purchase of an easement upon which a radio building is to be constructed by the Texas Department of Public Safety, in the vicinity of Midland, Texas, is authorized under the provisions of House Bill 140, Acts of the 54th Legislature, Regular Session, 1955, chapter 519, page 1499. We, therefore, must answer your first question in the affirmative.

Section 1 of the Acts of the 51st Legislature, Regular Session, 1949, chapter 323, page 606 (Article 681, V.C.S.) provides, in part:

"The State Board of Control, through its chief of such division, shall design all public buildings erected at the expense of the state where designing is not otherwise provided by law or by its appropriation bill; but in no instance shall plans or designs be adopted by the head of any department, board, institution, or school,

Honorable Robert S. Calvert, page 4 (WW-238)

other than the state educational institutions of higher learning and the Texas Prison System, and the Texas State Board for hospitals and special schools, unless such design and plans have been approved by the Board."

We construe this statute to require the State Board of Control to design any public building constructed at the expense of the State; except where the Legislature, by law or in the particular appropriation bill, has granted some other State Agency the authority to design the building in question. We believe that the statute further requires that even if the plans or designs of the building be exempt under the preceding exceptions, the plans or designs must be approved by the State Board of Control prior to their acceptance by the head of any department, board, institution, or school. The only agencies exempted from this latter requirement are: the state educational institutions of higher learning, State Prison System, and the Texas State Board for Hospitals and Special Schools.

Your request, and the file attached thereto, indicates that the State Board of Control has not approved the plans and specifications of the particular building in question.

We believe that this building must of necessity come within the requirements of Section 1 of Acts of the 51st Legislature, Regular Session, 1949, chapter 323, page 606 (Article 681, V.C.S.). For this reason we must answer your second question in the negative.

This opinion is only applicable to the factual situation presented.

SUMMARY

The Comptroller of Public Accounts may issue a warrant to pay for the necessary easement involved in the construction of a certain radio building to be built by the Texas Department of Public Safety near Midland, Texas, but may not issue a warrant to cover the costs of the plans and specifications for this same building.

Very truly yours,

WILL WILSON
Attorney General of Texas

By *Wayland C. Rivers, Jr.*
Wayland C. Rivers, Jr.
Assistant

WCR:pf:wb

Honorable Robert S. Calvert, page 5 (WW-238)

APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman
J. C. Davis, Jr.
John Reeves

REVIEWED FOR THE ATTORNEY GENERAL

BY: Geo. P. Blackburn